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RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Written statement*/ submitted by Human Rights Watch,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[5 January 2001]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

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ENG

In this year of the Third U.N. World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, people around the world face discrimination in criminal justice; in the public administration of social services, education, and housing; and in the denial or deprivation of nationality and citizenship rights on racist grounds.

The failure of states parties to honor obligations under the International Covenant on Civil and Political Rights (ICCPR)—and its companion standard, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD)—has been particularly acute as it concerns the people who live under the hidden apartheid of caste discrimination. Racial discrimination and related intolerance also pose new threats to migrants and refugees around the world: and to the international refugee protection regime itself.

The United States, in its initial report to the Committee on the Elimination of Racial Discrimination, in September 2000, frankly acknowledged dramatically disproportionate incarceration rates for minorities in the criminal justice system and cited studies indicating that members of minority groups, especially African- and Hispanic-Americans, "may be disproportionately subject to adverse treatment throughout the criminal justice process." It further acknowledged concerns that "incidents of police brutality seem to target disproportionately individuals belonging to racial or ethnic minorities." The report, however, did not question whether ostensibly race-neutral criminal laws or law enforcement practices causing the incarceration disparities violated CERD, nor did it acknowledge the federal government's obligation, under CERD, to ensure that state criminal justice systems (which account for 90 percent of the incarcerated population) are free of racial discrimination.

Criminal justice policies in the United States stripped many of its nationals of civil rights in a manner disproportionately affecting minorities. A growing number of citizens were unable to vote because of laws that disenfranchise people convicted of felonies who are in prison, on probation or parole—and even, in one quarter of the states, who have finished serving their sentences. An estimated 3.9 million U.S. citizens were disenfranchised, including over one million who had fully completed their sentences. Black Americans were particularly hard hit: 13 percent of black men—1.4 million—were disenfranchised. In the states of Alabama and Florida almost one in three black men was unable to vote because of a felony conviction. Blanket criminal disenfranchisement provisions violate the ICCPR's article 25, on the right of citizens to vote, which forbids "unreasonable restrictions" on this right. The Human Rights Committee has found that even in those exceptional cases in which criminal disenfranchisement may be established by law, "the period of such suspension should be proportionate to the offence and the sentence." The disproportionate impact of disenfranchisement laws on minorities is also inconsistent with the principles of non-discrimination contained in the ICCPR and CERD. Discrimination in criminal justice and public policy is perhaps most pervasive and deep rooted where discrimination is founded on caste, or, as in the United States, where the heritage of slavery and legislated segregation remains a potent factor. This sometimes embraces hidden forms of racism that have extraordinary rights-defeating consequences. In India, the

emancipation by law of members of castes once known as "untouchables"—and now known as Dalits—failed to eliminate the norms and structures of India's hidden apartheid. Discriminatory societal norms continue to be reinforced by government structures ranging from the police and the lower courts to state and municipal authorities. Caste violence claimed the lives of scores of men, women, and children in 2000 in a series of massacres committed with impunity. On June 16, 2000, in Miapur village in Bihar, police left the scene as an upper-caste militia slaughtered thirty-four Dalit men, women, and children. There are more than 160 million Dalits in India and tens of millions of others with similar caste distinctions in other South Asian countries.

The Roma minority in countries of Eastern Europe endure police abuse and the denial of equal protection under the law as well as discrimination in access to education and rights of residence. Harassment and violent attacks against Roma in Bulgaria, Croatia, the Czech Republic, Hungary, Romania, Serbia, and Slovakia, and expulsion from homes and communities was widely reported in 2000. Roma children often lacked access to schools in Croatia, and in the Czech Republic they were disproportionally shunted into classes for the mentally disabled. In Serbia, Croatia, Hungary—and Greece—municipal authorities forced Roma out of their homes. In Serbia, Roma in Sabac were turned away from a public swimming pool.

In Russia, enforcement of control of movement and residence often assumed ethnic or racial dimensions, with the *propiska* system of permits providing a pretext for the police harassment, arbitrary arrest, and extortion of people distinguished by their racial characteristics. Moscow police in September 1999 were given carte blanche in the wake of two bombing incidents there to carry out mass arrests of ethnic Chechens living in the city, taking more than twenty thousand Chechens to police stations. Administrative measures kept Chechen children out of school, while adults had trouble finding work, registering marriages, or receiving passports.

Discrimination in the determination of nationality and citizenship has denied whole populations a nationality in their own countries, or stripped them of their citizenship by political fiat, because of their race or descent. Some have been present in a country for generations, often predating their country's independence. Discrimination on the basis of gender often combines with racism as a discriminatory factor in states that define citizenship in terms of racial or national "purity." As citizenship is restricted to the children of male nationals, female citizens are discouraged from marrying men of a distinct race or nationality because their children would be denied citizenship. Naturalization policies, too, may deny citizenship on racial or national grounds even for people who have established deep roots in a country and have retained no connections with any other.

In some cases, governments recognized particular minorities as distinct from foreigners—as in the case of Syria's large Kurdish minority, hundreds of thousands of members of Thailand's hill tribes, or Kuwait's Bidun. Although not "mere aliens," a distinction used by the Human Rights Committee in interpreting the ICCPR's article 12, they are accorded a restrictive status short of full recognition as nationals: as if citizens without citizenship. Kuwait's 120,000 Bidun residents, for example, many of whose families have lived in Kuwait for decades or generations, should be

eligible for naturalization but have not been granted it. Since the mid-1980s, they have faced widespread and systematic discrimination, including violations of their right to enter and leave Kuwait, to marry and found a family, and to work. Their children's right to education, to be registered immediately after birth, and to acquire a nationality are also violated.

Arbitrary deprivation of citizenship and disputed nationality is both a cause and consequence of forcible displacement, and a significant obstacle in seeking solutions to long-standing refugee situations. In South Asia, more than 100,000 Bhutanese refugees remain in exile, the majority of them in southeast Nepal, after most of them were arbitrarily stripped of their nationality and expelled from Bhutan in the early 1990s. Ten years later, the Bhutanese government continues to block refugee return, claiming that the majority of them are not bona fide Bhutanese citizens and hence enjoy no right to return.

Particular calamities occur when governments strip whole ethnic or racial groups of their recognized nationality, most commonly in situations of upheaval or when new states emerge. In the Ivory Coast, ethnic politics became a center-piece of political discourse, the questioning by high officials of who was a "true Ivorian" leading to extreme violence. In Cambodia, members of the ethnic Vietnamese minority faced a new wave of repression in November 1999, when authorities charged that some 600 ethnic Vietnamese were illegal immigrants. The villagers said they were long-time Cambodian citizens and that local authorities confiscated their identity documents before they were forced to flee. Discriminatory nationality and citizenship policies and practices in these circumstances are frequently accompanied by racist violence.

Throughout the world, racial discrimination within the terms of CERD and the ICCPR may be pervasive in criminal justice, aspects of public administration, or in the determination of nationality and citizenship rights with or without the express intent of law makers or the executors of public policy to discriminate. The convention on racial discrimination requires states to guarantee to all individuals the enjoyment of rights without such discrimination—and to ensure that public policies are discriminatory neither in purpose nor in effect.

As preparations continue for the World Conference, this Commission should make every effort to address the discriminatory effect of public policy that, regardless of its intent, serves to lock people away from the exercise of civil and political rights—and by doing so bars their way to the enjoyment of economic, social, and cultural rights.